



MEMORANDUM

To: PLANNING COMMISSION

Date: October 24, 2006

From: COMMUNITY DEVELOPMENT DEPARTMENT

Subject: POLICY TO ESTABLISH SEPARATE DEVELOPMENT SCHEDULES FOR MONITORING OF MEASURE C PROJECTS, AMENDING DEADLINE DATES AND ESTABLISHING A SUBCOMMITTEE TO REVIEW SCORING FOR IMPACT FEES AND RELATED MATTERS

REQUEST

A request to adopt a policy establishing separate development schedules for residential projects awarded a building allotment under the Residential Development Control System. Also requested is approval to initiate amendments to current project development schedules to extend interim (soft) deadline dates.

RECOMMENDATION

1. Amend/adopt the attached policy establishing separate development schedules for monitoring of Measure C projects and amending processing deadline dates for Measure C projects.
2. Provide direction on related matters as outlined in this report.

BACKGROUND

Development Schedule Policy:

Section 18.78.125 D. of the Residential Development Control System (RDACS) ordinance requires the annual residential building allotment to be issued no less than 16 months prior to the start of the first fiscal year in which the allotments must be used. Section 18.78.125 G. of the RDACS ordinance stipulates that a project must physically commence construction of the dwelling units by the end of the fiscal year of the residential building allotment. To comply with these statutory deadlines, the RDACS competition is completed prior to March 1 in the prior fiscal year and all residential projects are required to proceed according to an approved development

schedule. This development schedule is incorporated into the project's Residential Development Agreement as Exhibit "B." Approval of the Development Agreement is a legislative action requiring public hearings before the Planning Commission and City Council and adoption of an ordinance by the City Council. A developer may require an extension of time on one or more of the deadlines in the development schedule. To extend the deadlines, the developer must file an application to amend the Development Agreement and the amendment also requires subsequent hearings before the Commission and Council and adoption of another ordinance. Rather than continuing to require developers to go through a legislative process to amend their development schedules, the Planning Commission, at their September 12, 2006 meeting, agreed with a staff proposal for development schedules to be adopted by Planning Commission resolution. Extensions of time would also be approved by Planning Commission resolution. Under the attached policy the Development Agreement would still have an Exhibit B Development Schedule with a hard deadline for commencement of construction no later than June 30th of the fiscal year of the building allotment. Other deadlines, such as applications for subdivision map and site and architectural approvals and final map processing, would continue to be monitored on a quarterly basis through the separate development schedule approved by the Planning Commission. The policy provides that the Commission may approve amendments to a project's development schedule based on findings that the project was delayed due to the City's failure to grant a building permit due to an emergency situation as defined in the Municipal Code, or extended delays in environmental review, outside regulatory agency permit processing, construction financing restrictions and other delays not the result of developer inaction.

Approval of the attached policy is recommended by minute action.

Extension of Interim (soft) Deadline Dates:

Dividend Homes (see attached letter) and other developers are expected to apply for amendments to their Development Agreements to extend the interim filing deadlines contained in their Exhibit "B" Development Schedules. Several of Dividend's projects are encountering delays obtaining approvals from outside regulatory agencies. At the same time, as documented in the attached September 15, 2006 letter from Dick Oliver, the real estate market is experiencing a significant downturn. Mr. Oliver expects his lenders to impose holds on additional construction starts if sales do not pick up in the remaining months of 2006. New home sales in "Coyote at Capriano" project has dropped from 4 homes sales to 1 sale in May and 1 sale in August. Other builders are likely experiencing similar declines in sales.

Staff proposes that the City take a proactive approach and determine which projects may require amendments to their interim filing deadlines and for the City to initiate these amendments and charge developers a "half rate" price due to the public benefit in keeping project from defaulting during this soft housing market and to reflect time and cost efficiencies of consolidated processing. At the same time, based on the Commission's new Development Schedule Policy, it is recommended the project deadlines, with the exception of the commencement of construction date, be removed from each project's Development Agreement Exhibit "B" schedule and placed in a new development schedule which would be adopted by resolution for each project by the Planning Commission. This action would reduce the staff time preparing separate staff reports

for each project and the Commission and Council's time conducting public hearings for each Development Agreement amendment. It is recommended staff be directed to initiate procedures to amend the Development Agreements and interim (soft) deadlines to remedy project scheduling defaults as necessary. Approval of amended development schedules would only be recommended for projects where the delay is not the result of developer inaction. The extension of soft deadline dates would be considered along with the possible transfer of fiscal year building allotments between projects discussed under the next topic in this memorandum.

Transfer of Allotments between projects:

Because of the downturn in the housing market, or because of delays due to extended city or outside agency processing, some projects may need additional time to commence construction. At the same time, Measure F on the November ballot will allow applicants awarded a building allotment in the March 2006 Measure C competition, to advance the start and completion of their projects. Commissioners may recall that this year's competition awarded building allotments over three fiscal years through FY 2009-10. Measure F will allow these projects to start and complete construction in the first year of the three year allotment. If Measure F passes, staff recommends that all the Measure C developers be surveyed to determine which projects may need adjustments in their start and completion schedules. Staff proposes that for those March 2006 competition projects that can start earlier, that the second and third fiscal year allotments from those projects (FY 08-09 & FY 09-10 allotments) be transferred to projects with current or next fiscal year allotments (FY 06-07 & FY 07-08) that would need more time to complete their processing and commence construction. The current or next fiscal year allotments from these projects would be transferred to the March 2006 competition projects that Measure F would allow to start early. This transfer of fiscal year allotments between projects will hopefully minimize the number of current fiscal year allotments that would need to be extended into the next fiscal year. Staff will prepare a transfer policy and procedures for Planning Commission as part of this action.

Subcommittee to Review Impact Fees and Scoring Criteria:

Section 18.78.188(C) of the Measure C Ordinance requires the Planning Commission to review the standards and criteria following each competition, to determine whether any changes or amendments are necessary for the next competition. Staff recommends the Planning Commission appoint a Subcommittee to review the standards and criteria for next year's Measure C competition. In addition, it is recommended the Subcommittee review the points assigned to impact fees in the evaluation criteria in various categories. See attached letters from Dick Oliver and Scott Schilling. As noted in Mr. Schilling's letter dated September 19, 2006, the Morgan Hill Unified School District recently increased the District's schools facilities fee from \$3.09 to \$4.95 per square foot. Points assigned to projects for payment of this fee in the Schools category will need to be reconsidered. The fee increase also impacts existing projects that have made commitments to provide for pedestrian safety improvements under the Schools category that were based on fee structures that were in place at the time of the competition. In their letters, both Mr. Oliver and Mr. Schilling have requested that the Planning Commission conduct a workshop to address the impact fee issue. Staff recommends the Subcommittee first address

the issue, to gain a better understanding of the matter, and then perhaps conduct a workshop with the full Commission as requested. Appointment of the Subcommittee is scheduled for the December 12, 2006 Commission meeting. Staff recommends the Subcommittee begin meeting in January 2007.

Evaluation of Market Conditions and Determining the Building for the 2007 Competition:

Bay area economic indicators show a continuing downturn in the housing market. Home sales in Santa Clara County in September 2006 were down more than 30 percent compared to sales figures in September 2005. If the market trend continues, lenders may begin tightening up on credit, allowing fewer new housing starts. If this occurs, some developers may need extensions of their development schedule hard deadlines to preserve their building allotment. In the spring of 2007, the Planning Commission and City Council must determine the total building allotment for the next Measure C competition. At the same time, the housing market should be examined further to determine if a slowdown or hold on construction starts or other market factors make it necessary to initiate further amendments to Measure C projects development schedules, which could include exceptions to loss of building allotments (ELBA's), and extensions on both soft and hard deadlines.

Attachment: Draft Development Schedule Policy
 Letters from Richard Oliver dated June 23 through October 5, 2006
 Letter from Scott Schilling dated September 19, 2006

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CITY OF MORGAN HILL PLANNING COMMISSION POLICIES AND PROCEDURES

PCP-

**SUBJECT: POLICY ESTABLISHING SEPARATE DEVELOPMENT
SCHEDULES FOR MONITORING OF MEASURE C
PROJECTS AND AMENDING DEADLINE DATES FOR
MEASURE C PROJECTS**

EFFECTIVE DATE: OCTOBER 25, 2006

REVISION DATE:

INTRODUCTION:

Section 18.78.125 D. of the Residential Development Control System (RDCS) ordinance requires the annual residential building allotment to be issued no less than 16 months prior to the start of the first fiscal year in which the allotments must be used. Section 18.78.125 G. of the RDCS ordinance stipulates that a project must physically commence construction of the dwelling units by the end of the fiscal year of the residential building allotment. To comply with these statutory deadlines, the RDCS competition is completed prior to March 1 in the prior fiscal year and all residential projects are required to proceed according to an approved development schedule. This development schedule is incorporated into the project's Development Agreement as Exhibit "B." Approval of the Development Agreement is a legislative action requiring public hearings before the Planning Commission and City Council and adoption of an ordinance by the City Council. To extend the deadlines, the property owner/developer must file an application to amend the Development Agreement and the amendment also requires subsequent hearings before the Commission and Council and adoption of another ordinance. Rather than continuing to require developers to go through a legislative process to amend their development schedules, this policy allows a development schedule to be adopted by Planning Commission Resolution and any extensions of time be approved by the Planning Commission by resolution on consent calendar.

POLICY:

Section 18.78.150 of the Morgan Hill Municipal Code requires a quarterly review of each development which has received a development allotment to determine whether satisfactory progress is being made with the processing of appropriate plans with the planning division. To monitor the progress of each development, it shall be the policy of the Morgan Hill Planning Commission to require each project to proceed in accordance with an approved development schedule adopted by Planning Commission resolution. A Residential Development Agreement shall continue to be required to secure all RDCS competition commitments and shall include the end of fiscal year deadline to commence construction of the development.

The Residential Development Agreement would contain the following deadline:

- Building Permit Commencement of Construction

The Development Schedule approved by Resolution would contain the following deadlines:

- Subdivision and Zoning Applications filed on 6/30, 12 months prior to the start of the fiscal year of the allotment.
- Site Review Application filed on 9/30, 9 months prior to the fiscal year of the allotment.
- Final Map Submittal filed on 1/31, 5 months prior to the fiscal year of the allotment.
- Building Permit Submittal filed on 5/15 for the fiscal year starting on 7/1.
- Building Permit
 1. Obtain Building Permits by 9/30 of the fiscal year of the allotment.
 2. Commence Construction by 4/30 of the fiscal year of the allotment.

The above filing deadlines by be extended upon approval of the Planning Commission based on findings that the project was delayed due to the City's failure to grant a building permit due to an emergency situation as defined in Section 18.78.140 of the Municipal Code, or extended delays in environmental review, outside regulatory agency permit processing, construction financing restrictions and other delays not the result of developer inaction.

This policy shall remain in effect until modified by the Planning Commission.

APPROVED:

ROBERT BENICH, CHAIR

Memo:

PLANNING DEPT.

To: Planning Commission
From: Dick Oliver, Dividend Homes, Inc.
Date: 10-5-06
Re: Soft and Hard Deadlines

OCT 04 2006
CITY OF MORGAN HILL

Honorable Members of the Planning Commission:

I started the process of requesting some relief from the soft dead lines in June of this year, and more recently (due to the down turn in the real estate market) requesting relief from some of the hard deadlines, without the necessity of filing multiple applications for amending our development agreements. I now have five default letters, and so I need to act in order to avoid either criticism or jeopardizing the project approvals.

I will be out of town from October 18 through November 7, so I am unable to attend your noticed meeting of October 24th, when you will be discussing this subject. I therefore seek to ask permission to be able to submit the applications for amendments to the Planning Department with the understanding that they will not be formally filed until after your meeting, but within the 30-day cure period (which lapses on October 28, 2006), unless you can authorize an alternate procedure.

We currently have 8 active projects in Morgan Hill, their status is as follows:

Coyote Estates, Phase 11 (last phase) of 20 homes: under construction & on schedule.
Coyote Estates @ Capriano (24 homes): under construction & on schedule
Mallorca @ Capriano (10 homes): under construction & on schedule
Mission Ranch Phase 9A (17 homes): under construction & on schedule
Mission Ranch Phase 9B (18 homes): awaiting FM approval. In default for permits
Ranch at Alicante Phase 1 (8 homes): under construction & on schedule
Ranch at Alicante Phase 2 (7 homes): In default for permit issuance
Alicante Phase 2 (19 homes): under construction & on schedule
Alicante Phase 3A (12 homes): In default but FM recording and permit issuance by 10/17
Alicante Phase 3B (18 homes): In default for FM recording and permit issuance
San Savigno: In process and on schedule, but will be in default in Spring
Mallorca (15 units): In default. Awaiting Army Corps and plan submission

In all these projects the Hard Deadline for commencement of construction date is 6-30-07

I am in the process of preparing the five Amendment to Development Agreement Applications. Your approving a process where staff could extend at least the soft deadlines would alleviate substantial cost and filings on our part and substantial Staff, Commission and Council times, and be much appreciated. Please refer to my prior letters to you for additional information on my suggestions for action at your October 24th meeting.

Thanks you,

Dick Oliver

DIVIDEND HOMES, INC.
385 WOODVIEW AVE., SUITE 100
MORGAN HILL, CA 95037-2891
(408) 779-5900 FAX (408) 779-3840
"roliver@dividendhomes.com"

PLANNING DEPT.
SEP 28 2006
CITY OF MORGAN HILL

September 282006

Ed Tewes, City Manager
Kathleen Molloy Previsich, Community Development Director
City of Morgan Hill
17555 Peak Ave.
Morgan Hill, CA 95037

Re: Measure C Project Deadlines – Measure C Commitments - Fee Increases – BMR Pricing

Dear Ed and Kathy:

I want to thank you for your recent meeting(s) with Rocke, Scott and myself. After our last meeting on September 21st. Scott Schilling has sent to you a letter regarding fee increase, which echo some of our mutual concerns. As we discussed, we are requesting a workshop with the Planning Commission (and Council Members if you feel appropriate) as to the Measure C Commitments, Fee Increases and BMR Pricing. We are further requesting a more expedited procedure (which may be Staff generated requested Commission and Council resolutions) regarding the Measure C Soft Deadlines and the June 30th deadline for commencement of construction.

Expedited Items for Consideration

Please refer to my letter, dated September 15, 2006, and my earlier letter dated August 9, 2006, regarding both the Soft Deadlines and the Hard Deadlines. Given the realities of the real estate market and the deadlines set in existing Development Agreements, there is a need to address these two issues in a manner which is fair and equitable to both the development community and the City. It is our request that action on these two items occur prior to the end of this calendar year in order to avoid the excessive expenditure of time and money for both the development community and the City.

- A. Soft Measure C Deadlines (plan submittal and permit issuance)
- B. Hard June 30th Deadline for Commencement of Construction

Work Session Items for Consideration

Please refer to my letter to Bill Newkirk, dated August 6, 2006 and to Garrett Toy, dated September 13, 2006 (both relating to the need to update the BMR pricing) and the letter from Scott Schilling, dated September 19, 2006 regarding MHUSD fee increases and other off-site school safety commitments. In addition there needs to be a review of what we feel are excessive off-site required commitments in the Public Works section, the Circulation and Efficiency section and in the Livable Communities section of Measure C. We believe that

our concerns can and should be addressed in a work shop environment and then considered by the appropriate sub-committee of the Planning Commission (with representation from the development community) for subsequent action by the Planning Commission and City Council prior to the next Measure C competition.

- A. School Fee increases and Measure C School Commitments
- B. Public Works Off-Site Commitments
- C. Circulation Efficiency Off-Site Commitments
- D. Livable Communities Commitments

Very truly yours,

DIVIDEND HOMES, INC.



By: Richard B. Oliver
President

Cc: Roche Garcia, Scott Schilling, Ralph Lyle

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September 15, 2006

Ed Tewes, City Manager
Kathleen Molloy Previsich, Community Development Director
City of Morgan Hill
17555 Peak Ave.
Morgan Hill, CA 95037

Re: Measure C Project Deadlines

Dear Ed and Kathy:

Thank you both for taking the time to meet with me, Rocke Garcia and Scott Schilling. It was helpful, I believe, to be able to exchange thoughts regarding the two concerns which we, as Morgan Hill developers, have.

Soft Deadlines within Measure C:

We continue to be concerned about the disconnect between the Measure C hard deadline for construction commencement (6/30) and the soft deadlines for permit issuance which in some instances can be 9 months prior to the hard deadline. Given the requirement to pay school fees and permit fees, which are substantial, and then not needing, desiring or sometimes being able to actually commence construction for many months latter, we find ourselves in a hardship situation.

I have expressed these concerns to the Planning Commission, and based upon my latest information, I believe they are addressing those issues. I believe, however, that the solution may be effective only in future years, and not the present year (i.e. for projects which must commence by June 30, 2007), which is of more urgent concern for some of us.

My request then is for the Planning Commission and City Council to adopt some interim measure which would equitably address this issue for the benefit of all current projects on a global basis so as to avoid the necessity of each developer for each project filing for Development Agreement Amendments, with the attendant costs, staff time, Commission time and Council time. I would hope that such action might be taken along with a similar request as to the Hard Deadline for June 30, 2006, set forth below.

Hard Deadline for Commencement of Construction of 6-30-07:

The real estate market is experiencing a significant downturn. At the present time we cannot tell if it will be short lived or if it will deepen further, and what impacts it will have on us. We have spoken with our lenders, and the caution flag is up. We fully expect to see lender imposed holds on additional construction starts if sales do not pick up in the remaining months of 2006.

As an example, our project "Coyote at Capriano" has 20 R-1 homes, 2 BMR and 2 Moderates. Sales opened in April, with 4 sales. Since then we have had 1 sale in May and 1 sale in August. We have an additional ten homes (R-2) which are under construction and will be released for Sale at the end of September. With 6 sales in 5 months, we have to be concerned about where sales are headed. If the real estate market has not significantly improved by April, our lenders will not allow us to start the new projects (e.g. San Savigno, Mallorca, Alicante Phase 3B, The Ranch at Alicante Phase 2 and Mission Ranch Phase 9B) which are under Measure C Hard Deadline of having construction commenced by June 30th, 2007.

We believe that most, if not all, other developers will face a similar problem by April if the real estate market does not significantly improve by Spring. At that time we all would be required to file for Development Agreement Amendments, which naturally will be costly for the developers as well as taking significant staff, Commission and Council time.

I therefore request the Planning Commission and City Council, consider and hopefully approve, a Global six month extension to the Hard Deadlines, and a extension of the Soft Deadlines for issuance of building permits to 45 days prior to the extended Hard Deadline.

I think it would be appropriate that as a condition for any developer qualifying for the extension to the Hard Deadline that their improvement drawings and Final Map must have been submitted to Public Works by the current deadlines for such submittal in existing Development Agreements for each project.

Assuming that the City Council adopts such a measure, I would also think it appropriate that the Community Development Director and the City Manager, together, be given the authority to verify that the real estate market conditions in April of 2007 in fact merit implementation of such a global extension.

I would be pleased to provide any additional information or supporting data that you might need in order to bring this request before the Planning Commission and City Council. I believe that adopting such a measure would be in the best interest of the City as well as the developers in Morgan Hill, and would avoid needless costs and much staff, Commission and Council time.

Very truly yours,

DIVIDEND HOMES, INC.

By: Richard B. Oliver
President

Cc: Rocke Garcia, Scott Schilling, Ralph Lyle

PLANNING DEPT

AUG 9 2006

CITY OF MORGAN HILL

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385 WOODVIEW AVE., SUITE 100
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"roliver@dividendhomes.com"

August 9, 2006

Planning Commission
c/o Planning Department
City of Morgan Hill
17555 Peak Ave.
Morgan Hill, CA 95037

Re: Measure C – Soft Deadlines

Dear Members of the Planning Commission:

I have attached hereto a copy of my letter, directed to the Planning Department, regarding the "Soft Deadlines" provided for in our Development Agreements under Measure C.

The Staff suggested that my request was a matter that would more appropriately addressed by the upcoming RDCS Subcommittee meeting. I therefore request that the matter be brought before that Subcommittee with a suggestion for a change that would provide latitude for the Community Development Director to have authority to consider and approve, upon appropriate showing, extending the "Soft Deadlines". This would avoid the time and cost of the applicants, the Staff and the Planning Commission and Council if such modifications of the "Soft Deadlines" are justified. I am not suggesting that changes to "Hard Deadlines" (mandated in Measure C) be handled this way. I am also aware that there are number of other developers who share this same concern.

Please let me know if and when I might present my arguments to the Subcommittee.

Very truly yours,

DIVIDEND HOMES, INC.



By: Richard B. Oliver
President

Cc: Joan Moore, Planning Staff

Encl.

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PLANNING DEPT.

AUG 10 2006

CITY OF MORGAN HILL

June 23, 2006

Joan Moore
Planning Department
City of Morgan Hill
17555 Peak Ave.
Morgan Hill, CA 95037

Re: Measure C – Soft Deadlines

Dear Joan:

As the housing market and sales have begun to slow down, we have encountered some resistance from our lenders to have construction starts get too far out ahead of sales. I have reviewed all of our Morgan Hill Projects, and because we have been able to consistently commence construction ahead of schedule, I believe we are in good shape for timely commencement of construction; however, we do need to be cautious in our construction starts during the next few years.

In reviewing all of our Development Agreements, there is a disconnect between the soft deadline for obtaining building permits and the hard deadline for commencement of construction. As an example, in both Alicante and Mission Ranch (both ongoing projects) the soft deadline for obtaining building permits is between 9 and 10 months prior to the hard deadline for commencement of construction.

At this time I see no problem with the hard deadline for commencement of construction; however, since permits expire within 6 months, because permits are expensive and because school fees now must be paid prior to building permit issuance there is a real financial burden for having to meet the soft dead lines for permit issuance so far in advance.

Is there an administrative way that the soft deadline for permit issuance, especially for ongoing projects, be either extended or not enforced with any penalty?

Please advise at your convenience.

Very truly yours,

DIVIDEND HOMES, INC.

By: Richard B. Oliver
President

SOUTH VALLEY DEVELOPERS

September 19, 2006

PLANNING DEPT.
SEP 25 2006
CITY OF MORGAN HILL

Kathy Molloy Previsich
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037

Dear Kathy:

As you may be aware, the Morgan Hill Unified School District has just approved a significant fee increase for residential construction. The School Board recently approved an increase on each new home from \$3.09 per square foot to \$4.95 per square foot. This will mean that each new home will pay almost \$4,000 dollars in additional school fees. For a typical 2,000 sq.ft. home the fee has increased from approximately \$6,180 dollars up to \$9,900 dollars.

As home builders in the community, we are concerned about the increase in School District Fees and increased costs in Developer Fees that relate to the construction of new residential housing in the community. We are especially concerned with the School District Fee because of the direct impact it has to the costs associated with the Schools section of the Measure C Scoring Criteria. The Morgan Hill Unified School District failed to notify the City of Morgan Hill and the building community that the fee was going to increase, even as the City was reviewing the Measure C Scoring Criteria for changes and modifications for upcoming competitions.

The fee increase also impacts existing projects that have made commitments to provide for pedestrian safety improvements under the Schools category that were based on fee structures that were in place at the time of the competition.

We would respectfully request a workshop with the Planning Commission to discuss the Morgan Hill Unified School Fee as it relates to the Measure C Criteria under the Schools Category. We would also request a discussion of the City of Morgan Hill Developer Impact Fees as they relate to Measure C and the cost of producing housing in Morgan Hill.

Sincerely,



Scott Schilling
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c.c. Planning Commission
City Council
Dick Oliver
Rocke Garcia
Ed Tewes

